

DIRECT TESTIMONY OF
JONATHAN BURKE
ON BEHALF OF
LILY SOLAR LLC
DOCKET NO. 2016-89-E

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Jonathan Burke, 227 Southside Drive, Suite B, Charlotte, North Carolina 28217.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. National Renewable Energy Corporation, ("NARENCO"), Vice President of Development.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. Bachelor of Science in Mechanical Engineering from Tulane University; Masters of Science in Engineering Management from University of Missouri-Rolla; Masters of Business Administration for Executives from Rice University.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My Testimony is to support the pending Complaint of Lily Solar LLC.

Q. WHAT IS THE NATURE OF LILY SOLAR LLC'S RELATIONSHIP WITH NARENCO?

A. Lily Solar LLC is a South Carolina limited liability company. NARENCO is the sole Member of Lily Solar LLC.

1 **Q. DO YOU HAVE PERSONAL KNOWLEDGE OF THE FACTS OF LILY SOLAR**
2 **LLC’S COMPLAINT?**

3 **A. Yes.**

4 **Q. IN YOUR VIEW, WHAT IS THE NATURE OF LILY SOLAR’S COMPLAINT?**

5 **A.**Lily Solar LLC submitted a Large Generator Interconnection Application to SCE&G on
6 Feb 16, 2015 which was later approved by SCE&G Electric Transmission Support staff
7 on Feb 25, 2015. At Lily Solar’s initial Scoping Meeting held between Lily Solar’s
8 representatives and SCE&G representatives on March 3, 2015 (hereinafter, “Scoping
9 Meeting”), SCE&G explained that Lily Solar was a large generator and that the
10 interconnection of the Lily Solar was considered state jurisdictional but that no state
11 jurisdictional standard existed. SCE&G stated they would follow the Large Generator
12 Interconnection Procedures (hereinafter, “LGIP”) which references a Standard Large
13 Generator Interconnection Agreement (hereinafter, “LGIA”) that are contained in
14 SCE&G’s published Open Access Transmission Tariff (hereinafter, “OATT”) as Lily
15 Solar’s interconnection standard. SCE&G’s LGIP and LGIA are consistent with the
16 Federal Energy Regulatory Commission’s (“FERC”) *pro forma* LGIP and LGIA. In
17 accordance with SCE&G’s LGIP as found within the their currently effective OATT,
18 SCE&G tendered study agreements, study reports and accepted monetary deposits
19 consistent with that of their LGIP per the published OATT as the interconnection
20 standard. As SCE&G’s LGIP dictates, the “Interconnecting Utility shall tender the
21 Interconnecting Customer a LGIA.” On Jan 14, 2016 SCE&G tendered Lily Solar LLC
22 an agreement titled “Generator Interconnection Agreement (IA)”. Upon review of the
23 referenced non-conforming interconnection agreement, I found significant issues with the

1 non-conforming interconnection agreement as it was not consistent with SCE&G's
2 currently effective OATT LGIA dated August, 18 2015 nor was it consistent with the
3 previously executed study agreements between SCE&G and Lily Solar LLC. Lily Solar
4 relied on receipt of a conforming LGIA in advancing development. Lily Solar views
5 SCE&G's commitment as critical because the cost allocation and suspension provisions
6 (as well as other provisions) contained in SCE&G's OATT Conforming LGIA are vital to
7 the Lily Solar's success. Such provisions, as well as others, are not contained in the non-
8 conforming interconnection agreement ("Non-Conforming GIA") that SCE&G provided
9 to Lily Solar's representatives on January 14, 2016. For Lily Solar's part, Lily Solar
10 exhausted the requirements of SCE&G's LGIP and, in doing so and among other things,
11 Lily Solar complied with SCE&G's LGIP requirements by providing timely payments of
12 a total of \$150,000 over various stages and SCE&G received/accepted the deposits and/or
13 study payments. Importantly, at the end of SCE&G's LGIP process, the LGIP provides
14 in Attachment M, Section 11.1,

15 "[w]ithin (30) Calendar Days after the comments [on the draft
16 Interconnection Facilities Study Report] are submitted, Transmission Provider
17 shall tender a draft **LGIA**, together with draft appendices." (Emphasis
18 Supplied).

19 At the required time by SCE&G's LGIP to submit the conforming interconnection
20 agreement, no state jurisdictional standards existed and SCE&G should have tendered a
21 Conforming LGIA to Lily Solar; however, rather than tendering such a Conforming
22 LGIA, SCE&G instead tendered a Non-Conforming GIA, not previously reviewed or

1 approved by either the ORS or Commission, which is inconsistent with the agreed and
2 accepted form of conforming LGIA as published in their OATT.

3 **Q. WHAT LED YOU TO EXPECT A CONFORMING LGIA AS PUBLISHED IN**
4 **SCE&G'S OPEN ACCESS TRANSMISSION TARIFF?**

5 **A.** At the initial Scoping Meeting held between representatives of Lily Solar and SCE&G on
6 March 3rd, 2015, SCE&G offered and Lily Solar accepted the use of SCE&G's LGIP as
7 published in SCE&G's OATT, for purposes of establishing the interconnection standards
8 for Lily Solar. I was told by Matt Hammond (SCE&G Manager, Electric Transmission
9 Support) at the Lily Solar Scoping Meeting that SCE&G (1) agreed Lily Solar was a
10 large generator, (2) that a state jurisdictional interconnection standard did not exist (3)
11 SCE&G would follow their LGIP and LGIA as published on their tariff (OATT), (4)
12 SCE&G's LGIP and LGIA were based on the FERC *pro forma* agreements and (5) the
13 SCE&G LGIP and LGIA were posted on their OATT website. Upon Mr. Hammond's
14 statements to me at Lily Solar's Scoping Meeting, I communicated my agreement and
15 acceptance on behalf of Lily Solar. After the Scoping Meeting concluded and prior to
16 authorizing an additional \$40,000 LGIP payment (a \$10,000 payment was sent to and
17 accepted by SCE&G per SCE&G's LGIP), I reviewed SCE&G's LGIP and LGIA
18 published in their OATT and was satisfied with the interconnection standards proposed
19 by SCE&G. In particular, I believed the SCE&G proposed interconnection standards
20 possessed provisions necessary for Lily Solar's success and was satisfied the conforming
21 LGIA would be financeable. After completing my review and analysis, I authorized both
22 the execution of SCE&G's, LGIP referenced, System Impact Study Agreement and
23 payment of the \$40,000 System Impact Study deposit to SCE&G. SCE&G's LGIP and

1 conforming LGIA as published in their OATT do not reference SCE&G's ability to offer
2 a non-conforming generator interconnection agreement. Moreover, if I had known that
3 SCE&G would provide Lily Solar a non-conforming interconnection agreement, I would
4 have requested interconnection under FERC jurisdiction, which undoubtedly would have
5 required SCE&G to tender a Conforming LGIA to Lily Solar.

6 In accordance with SCE&G's initial commitment, SCE&G followed its LGIP in
7 processing Lily Solar's interconnection request. Importantly, SCE&G's LGIP provides
8 the following statement:

9 "[w]ithin (30) Calendar Days after the comments [on the draft Interconnection
10 Facilities Study Report] are submitted, Transmission Provider shall tender a draft
11 **LGIA**, together with draft appendices." (Emphasis supplied).

12 I believe SCE&G's actions further confirm that SCE&G was required to tender a
13 Conforming LGIA. The System Impact Study Agreement and Facility Design Study
14 Agreement each (1) were tendered by SCE&G, (2) were accepted by Lily Solar, (3) were
15 executed by both Lily Solar and SCE&G, (4) made reference to SCE&G's OATT as it
16 pertained to complying with SCE&G's LGIP/LGIA as the interconnection standards, and
17 (5) outlined financial deposits that were paid by Lily Solar in accordance with SCE&G's
18 LGIP and accepted by SCE&G prior to initiating the scopes of work. Furthermore, I
19 expected an OATT compliant LGIA due to supporting email correspondence from
20 SCE&G representatives to NARENCO on behalf of Lily Solar that referenced
21 compliance with their OATT within the transmittal documents.

22 Lastly, I had not received notice of SCE&G's plan to arbitrarily and/or
23 unilaterally depart from compliance with their OATT LGIP and LGIA as agreed by both

1 parties as use of Lily Solar's interconnection standards at any time prior to receipt of the
2 non-conforming interconnection agreement. Lily Solar relied and depended on SCE&G
3 to fulfill their contract terms for +10 months and to tender a conforming LGIA in
4 alignment with SCE&G's LGIP as published in their OATT.

5
6 **Q. PLEASE EXPLAIN THE IMPORTANCE OF THE SCOPING MEETING, AND**
7 **WHO ATTENDED THE SCOPING MEETING?**

8 **A.** The interconnection Scoping Meeting was the first opportunity for SCE&G transmission
9 team and Lily Solar's engineering consultants and representatives to review the
10 interconnection application and align on the interconnection standards prior to SCE&G
11 initiating the technical studies. Lily Solar's Scoping Meeting was held in person at
12 SCE&G's offices in Cayce, South Carolina on March 3, 2015. Typical Scoping Meeting
13 agenda items included (1) alignment of the point of interconnection option(s) available
14 with selection of the point of interconnection as the basis for future studies, (2) alignment
15 on the type of interconnection service to be studied (network and/or energy resource), (3)
16 alignment on the interconnection study standards, and (4) selection of the next study
17 SCE&G would perform. Lily Solar's representatives included NARENCO personnel
18 such as myself, Bret Sowers and Chris Alsante, as well as, interconnection/transmission
19 consultants Trae Beale (HDR Inc.) and Ted McGavran (McGavran Engineering PC) who
20 provided technical subject matter expertise. SCE&G also had several employees in
21 attendance (~10 people) with varied subject matter expertise and backgrounds from
22 transmission planning, communications, relay, etc., as well as, introduction to Mr. Matt

1 Hammond (SCE&G) and Mr. DJ Stone (SCE&G) who were Lily Solar's focal points for
2 administering the agreed interconnection standards and communication with SCE&G.

3 **Q. WHAT WAS THE RESULT OF THE SCOPING MEETING?**

4 **A.** The outcome of the Scoping Meeting included (1) better understanding of SCE&G's
5 transmission infrastructure anticipated to be impacted by Lily Solar, (2) alignment on the
6 project's point of interconnection that would be used for the interconnection studies, (3)
7 decision to have SCE&G study both network resource and energy resource service, (4)
8 agreement with SCE&G that Lily Solar was a large generator based upon our 70 MW AC
9 size, (5) concurrence that Lily Solar intended to sell power to SCE&G as a Qualified
10 Facility, (6) concurrence that Lily Solar would be processed as a large generator in
11 alignment with SCE&G's LGIP/LGIA per their Open Access Transmission Tariff (which
12 was similar to FERC *pro forma* LGIP contracts), and (7) Lily Solar's decision to skip the
13 feasibility study phase and immediately start the system impact study given time was of
14 the essence to ensure Lily Solar could energize with SCE&G's system in order to qualify
15 for the federal investment tax credit set to expire on January 1, 2017.

16 **Q. DID YOU ASK SCE&G TO RECONSIDER ITS DECISION NOT TO TENDER A**
17 **LGIA?**

18 **A.** Yes, multiple times. I initially asked Matt Hammond (SCE&G) to reconsider and
19 formally asked SCE&G again through its attorney, Chad Burgess as well prior to seeking
20 mediation via the ORS. All attempts were unsuccessful. I want to be clear that the
21 decision to file a formal complaint with the Commission was difficult given the likely
22 impacts that it would have on our relationship with SCE&G, and potentially with other

1 load serving entities in South Carolina. It was my preference to resolve the issue with the
2 form of interconnection agreement tendered to Lily Solar directly with SCE&G.

3 **Q. WHAT WAS SCE&G'S RESPONSE TO YOUR REQUEST FOR**
4 **RECONSIDERATION?**

5 **A.** Matt Hammond (SCE&G) stated via email on Jan 20, 2016, "We've provided the proper
6 agreement for your project..." Additionally, upon further clarification and request for
7 consideration we received the following response from Matt Hammond (SCE&G) in an
8 email on Jan 22, 2016 that stated, "Thank you for your time Wednesday to discuss the
9 interconnection agreement for Lily Solar. At this time, the agreement provided to you
10 last week is the agreement that we plan to move forward with for projects of this nature."

11 **Q. DID YOU ATTEMPT TO HAVE ORS MEDIATE THE DISPUTE?**

12 **A.** Yes.

13 **Q. DID YOU ATTEND ANY MEETINGS WITH REPRESENTATIVES OF ORS,**
14 **AFTER SCE&G'S FAILURE TO TENDER A LGIA?**

15 **A.** Yes.

16 **Q. WHAT HAPPENED WHEN YOU ASKED THE ORS TO MEDIATE LILY**
17 **SOLAR'S CONCERNS WITH THE ORS? WHAT WAS THE OUTCOME?**

18 **A.** After SCE&G stood firm on their decision not to tender a conforming LGIA, we
19 developed a short summary letter of the facts and asked for a meeting with members of
20 the South Carolina Office of Regulatory Staff ("ORS") to seek their leadership/guidance
21 to mediate a solution with SCE&G to avoid filing a Complaint at the Public Service
22 Commission. A meeting was held on February 8, 2016 with members of the ORS where
23 representatives of Lily Solar (Bret Sowers and myself) and our legal counsel (counsel

1 from Austin & Rogers and Balch & Bingham). We discussed the facts, SCE&G's breach
2 of contractual obligations and the impact of the breach on the project's likelihood of
3 success given SCE&G's decision to arbitrarily and unilaterally change the form of
4 interconnection agreement as agreed by both SCE&G and Lily Solar at the March 3,
5 2015 Scoping Meeting. Furthermore, evidence to reinforce the understanding was
6 provided to the ORS showcasing nearly 10 months of alignment between the parties
7 including email correspondence from SCE&G referencing compliance with their OATT
8 in progressing Lily Solar's application in compliance with SCE&G's LGIP as published
9 in SCE&G's OATT. A week or so after our meeting with the members of the ORS, I was
10 informed that the ORS would remain neutral and not take a position one way or the other,
11 I later learned that counsel for ORS formally notified this Commission that it would not
12 participate in this Docket. At this point, the 30 day deadline for executing the
13 interconnection agreement was about to expire, so I contacted SCE&G's Matt Hammond
14 (SCE&G) via phone to notify him that I had hoped to find a solution through mediation
15 with the ORS without filing a formal complaint. I expressed that NARENCO's primarily
16 concern was SCE&G's decision to not tender Lily Solar a conforming LGIA given
17 SCE&G offered and Lily Solar accepted the LGIP as published in SCE&G's OATT as
18 the interconnection standard at the Scoping Meeting and Lily Solar satisfied all aspects of
19 SCE&G's LGIP throughout the 10 month study period. After exhausting all are options,
20 Lily Solar filed this complaint with the Commission.

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3 **Q. PLEASE DESCRIBE ANY ADDITIONAL CONTEXT TO THE FINAL EVENTS**
4 **THAT LED UP TO THE TIME BETWEEN WHEN LILY SOLAR RECEIVED**
5 **THE NON-CONFORMING IA AND UP TO THE FILING OF A FORMAL**
6 **COMPLAINT AT THE COMMISSION.**

7 **A.** As mentioned, it was my preference to resolve the issue with the form of interconnection
8 agreement tendered to Lily Solar directly with SCE&G. As such, when first tendered the
9 non-conforming interconnection agreement, I contacted Matt Hammond (SCE&G) for
10 clarification. Mr. Hammond stated that this was the only form of interconnection
11 agreement that SCE&G would provide and affirmed that we had 30 calendar days to
12 review and execute the non-conforming interconnection agreement to keep our queue
13 position. I asked Mr. Hammond to reconsider and to send Lily Solar SCE&G's LGIA
14 consistent with SC&G's Open Access Transmission Tariff (OATT or Tariff) as offered
15 by SCE&G, accepted by Lily Solar representatives at the March 3rd, 2015 Scoping
16 Meeting, and supported by all further actions by both parties using SCE&G's LGIP as the
17 interconnection standards as published in SCE&G's OATT. Based upon Section 11.1 of
18 the SCE&G's LGIP per their OATT, Lily Solar should have been tendered a LGIA
19 (LGIA). Section 11.1 states:

20 "Interconnection Customer shall tender comments on the draft
21 Interconnection Facilities Study Report within thirty (30) Calendar Days of
22 receipt of the report. Within thirty (30) Calendar Days after the comments are
23 submitted, Transmission Provider shall tender a draft **LGIA**, together with draft

1 appendices. The draft **LGIA** shall be in the form of Transmission Provider's
2 FERC-approved standard form **LGIA**, which is in Appendix 6. Interconnection
3 Customer shall execute and return the completed draft appendices within thirty
4 (30) Calendar Days.” (Emphasis supplied)

5 After reviewing SCE&G’s OATT, I formally requested SCE&G to reconsider via
6 their attorney, Chad Burgess, before raising the concern with others. Mr. Burgess
7 communicated that he would look into the matter with Mr. Hammond. Ultimately,
8 SCE&G reviewed and stood by their decision to not tender Lily Solar an OATT
9 compliant LGIA. During one of my phone calls with Mr. Hammond, I confirmed that the
10 non-conforming interconnection agreement tendered had not been presented to the ORS
11 or Commission for approval. This decision was perplexing given the language in Lily
12 Solar’s System Impact Study Agreement and Facility Design Study Agreement executed
13 by both SCE&G and Lily Solar. Excerpts from each agreement are as follows.

14 *System Impact Study Agreement: Section 2.0 states:*

15 “Interconnection Customer elects and Transmission Provider shall cause
16 to be performed an Interconnection System Impact Study consistent with Section
17 7.0 of this **LGIP** in accordance with the Tariff.” (Emphasis supplied).

18 *And the Facilities Study Agreement: Paragraph 6.0 Miscellaneous states:*

19 “The Interconnection Facility Study Agreement shall include standard
20 miscellaneous terms including, but not limited to, indemnities, representations,
21 disclaimers, warranties, governing law, amendment, execution, waiver,
22 enforceability and assignment, that reflect best practices in the electric industry,
23 and that are consistent with regional practices, Applicable Laws and Regulations,

1 and the organizational nature of each Party. All of these provisions, to the extent
2 practicable, shall be consistent with the provisions of the **LGIP** and the **LGIA**.”
3 (Emphasis supplied).

4 **Q. DID SCE&G’S FAILURE TO TENDER THE CONFORMING LGIA CAUSE**
5 **YOU TO FILE A FORMAL COMPLAINT WITH THIS COMMISSION?**

6 **A.** Yes.

7 **Q. WHAT KEY BENEFITS DOES THE CONFORMING LGIA POSSESS THAT**
8 **WAS NOT OFFERED IN THE NON-CONFORMING GENERATOR**
9 **INTERCONNECTION AGREEMENT TENDERED TO LILY SOLAR BY**
10 **SCE&G?**

11 **A.** In short, the conforming LGIA as published in SCE&G’s OATT and the non-conforming
12 interconnection agreement tendered to Lily Solar differ in more ways than they are
13 similar. SCE&G’s LGIA as published in their OATT is very similar to the FERC
14 standard LGIA, which was rigorously vetted with input from multiple stakeholders
15 including independent power producers, regulated utilities and other interested parties
16 over the course of several decades. The following are key differences that impact the
17 project’s ability to secure financing. These differences include but are not limited to the
18 following: (1) Options for interconnection service, (2) Options to self perform Facilities
19 Engineering, Procurement & Construction, (3) Suspension options, (4) Limits on
20 Interruptions of Service by the Utility, (5) Network Upgrade reimbursement, (6)
21 Compensation for Actions During Emergency Conditions, and (7) other legal and liability
22 nuance differences in Force Majeure, Defaults, Assignments, Severability, etc.

1 Many of these benefits are self explanatory while others may not be as evident
2 without further explanation. For example, regarding suspension, the cost of solar has
3 declined (and continues to decline) so that the levelized cost of energy for a properly
4 sited utility scale solar project is reaching parity in many markets, including South
5 Carolina, as compared with other forms of traditional generation. What does this mean?
6 Lily Solar has a higher likelihood of success than ever to accept an avoided cost contract
7 from SCE&G as a Qualified Facility while meeting the minimum investment hurdle rates
8 for their asset class. Therefore, if Lily Solar were to receive the full benefit (up to three
9 years for suspension) as offered in the LGIA per their published OATT, Lily Solar, as a
10 Qualified Facility, could optimize its start of commercial operations to a time period of
11 its choosing and in alignment with highest likelihood of achieving industry hurdle rates
12 for its asset class. As another example, the network upgrade reimbursement provision as
13 included in a Conforming LGIA would allow Lily Solar to recover \$2.5 million of
14 network upgrade improvements to SCE&G's system. These provisions, as well as the
15 others mentioned, are not contained in the non-conforming generator interconnection
16 agreement SCE&G tendered to Lily Solar on January 14, 2016. Furthermore, the LGIA
17 would provide (1) the ability/option of Lily to self perform, (2) requirements for SCE&G
18 to buy as available electricity production output, (3) liquidated damages offered to Lily
19 Solar by SCE&G, (4) ability to provide limited operation to produce power under certain
20 events, (5) payment for reactive power, (6) utility curtailment limits on outages,
21 interruptions, scheduled maintenance, etc. (7) 50% shorter default cure periods when
22 caused by the utility, (8) additional remedies, and (9) audit rights. All of these

provisions are examples of the differences that cause the basis of concern and contention with SCE&G as it relates to Lily Solar's complaint.

Q. HOW DID YOU RELY ON SCE&G'S COMMITMENT TO FOLLOW THEIR LGIP IN EXPECTING THE CONFORMING LGIA?

A. Beyond the decisions to fund Lily Solar's LGIP deposits in 2015, we also chose to allocate funds toward advancing development to ensure the project had the highest likelihood of success to complete construction at the earliest date possible to qualify under the federal investment tax credit set to expire at the end of 2016. We viewed the potential loss of the federal investment tax credits at the end of 2016 as a real risk to the project's likelihood of success, so we advanced development to ensure the critical path was based upon speed of interconnection. Our key development activities included (1) negotiation and execution of a fee in lieu of tax agreement, (2) completion of environmental and permitting studies, (3) local permitting and (4) power sales activities. Lily Solar's advanced development offers proof of reliance on being tendered an OATT conforming LGIA and execution of a reasonably calculated avoided cost power purchase agreement.

Q. DID YOU ENGAGE A LAW FIRM AND/OR CONSULTANTS TO ARRANGE A FEE IN LIEU OF TAX AGREEMENT ("FILOT")? IF SO, WHO?

A. We engaged Merit Advisors to assist with negotiating the commercial terms and augmented their services with Parker Poe to finalize the fee in lieu of tax (FILOT) agreement to comport with South Carolina law.

Q. WHAT IS THE IMPORTANCE OF A FILOT AND APPROXIMATE COST?

1 **A.** Property tax assessments are typically calculated by one (or blend) of three
2 methodologies including (1) installed cost approach, (2) income based approach, and (3)
3 market comparable approach. Utility scale solar projects like Lily Solar are capital
4 intensive in nature so, given the typical assessment methodologies listed, the project's
5 property tax liability becomes one of the top expenses (lowering net income) over a solar
6 project's lifespan. If the property tax liability can be reduced via economic incentives
7 with the rural community in the form of FILOT agreements, SC solar projects can offer
8 (or take) a lower price for the sale of the electricity by passing through the property tax
9 savings to the buyer (or ratepayer as it may be) in the form of a lower levelized cost of
10 energy. In Lily Solar's case, the FILOT lowers the energy and capacity price required to
11 meet the market return expectations for its asset class. Allendale County's leadership
12 understood this concept well and "partnered" with Lily Solar in finding a mutually
13 acceptable FILOT payment structure. The economic benefits that accrue to the taxing
14 agencies (often rural communities like Allendale County) would be enjoyed as a
15 discretionary "windfall" to the tax base with long-lasting benefits for decades. Allendale
16 County leaders understood the long run benefit that Lily Solar's discretionary tax base
17 could provide given Lily Solar would not required new public infrastructure nor would
18 Lily Solar place any increased burden on shared services. The external costs to complete
19 the FILOT were approximately \$55,000 and internal costs were approximately ~\$10,000.

20 **Q. PLEASE EXPLAIN THE NATURE OF SC SOLAR DEVELOPMENT LLC'S**
21 **RELATIONSHIP WITH NARENCO?**

22 **A.** SC Solar Development is a South Carolina limited liability company with NARENCO as
23 its sole member. NARENCO uses SC Solar Development LLC for both leasing activities

1 and intervention on dockets at the South Carolina Public Service Commission that pertain
2 to our utility scale business model. Given the lack of other utility scale developers at the
3 SC Solar Business Alliance and a SBA leadership team more inclined to advance
4 initiatives on behalf of the residential and commercial members (majority of member
5 interest), I felt it prudent to begin intervening via SC Solar Development LLC separately.

6 **Q. PLEASE EXPLAIN THE NATURE OF NARENCO'S RELATIONSHIP WITH**
7 **THE SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, ("SBA")?**

8 **A.** NARENCO is one of +50 trade members of the SBA. NARENCO does not have any
9 membership interest in the SBA as a "for profit" company.

10 **Q. DID YOU ATTEND ANY MEETINGS WITH REPRESENTATIVES OF SCE&G**
11 **IN NEGOTIATING THE STATE INTERCONNECTION STANDARDS? WHAT**
12 **CONCERNS DID YOU RAISE DURING THE NEGOTIATIONS?**

13 **A.** No, I was not invited nor did I attend any state interconnection standards negotiations. I
14 was told the state interconnection standards meetings were confidential in nature and
15 limited to interested parties by invitation only. NARENCO, SC Solar Development LLC
16 (a Commission approved intervener), nor any of our subsidiaries were invited to attend
17 the state interconnection standards meetings held by the SBA, ORS, regulated utilities
18 and invited stakeholders. From conversations with Mr. Bret Sowers at the time, he stated
19 that the small generator interconnection agreement was being used as the template for
20 state interconnection standard discussions up to 80 MW AC in size. I communicated to
21 Mr. Sowers my concerns that the small generator interconnection agreement *pro forma*
22 did not address needed aspects that were typical (and necessary) for large generators
23 including the right to suspend for three years, network upgrade reimbursement and limits

1 placed on utility scheduling curtailment, among others. I first gleaned that my concerns
2 related to the needs of large generators were not understood by members of the ORS at
3 our meeting with them related to SCE&G's contract breach of tendering a non-
4 conforming LGIA.

5 **Q. DID NARENCO PARTICIPATE IN THE INTERCONNECTIONS STANDARD**
6 **DOCKET, SPECIFICALLY, DOCKET 2015-362-E, AT THE COMMISSION?**

7 **A.** No. One of our employees, Bret Sowers, was appointed as Vice Chairman to the SBA in
8 2015 and did participate in the interconnection standards negotiation meetings in his
9 newly appointed capacity. As mentioned previously, our subsidiary, SC Solar
10 Development, intervened in the Docket. SC Solar Development was a Commission
11 approved intervenor that attempted to participate in the interconnection standard docket
12 after receiving notice that the interconnection standards negotiated confidentially
13 between the invited parties (which did not include NARENCO or SC Solar Development)
14 did not include typical large generator provisions . However, the Commission denied SC
15 Solar Development's request to participate.

16 **Q. DID LILY SOLAR PARTICIPATE IN THE INTERCONNECTIONS**
17 **STANDARD DOCKET, SPECIFICALLY, DOCKET 2015-362-E, AT THE**
18 **COMMISSION? IF YES, PLEASE EXPLAIN.**

19 **A.** No. One of our employees, Bret Sowers, was appointed as Vice Chairman to the SBA in
20 2015 and did participate in that capacity. However, another subsidiary of NARENCO,
21 SC Solar Development intervened in that Docket.

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- Q. WAS SC SOLAR DEVELOPMENT, OR LILY SOLAR, INVITED TO PARTICIPATE IN DISCUSSIONS CONCERNING A REVISED INTERCONNECTION STANDARD FOR SOUTH CAROLINA AT THE OFFICES OF ORS?**
- A.** No.
- Q. YOU HAVE STATED THAT NARENCO IS A MEMBER OF THE SOUTH CAROLINA SOLAR BUSINESS ALLIANCE, DID NARENCO HAVE ANY CONTROL OVER THE DISCUSSIONS/NEGOTIATIONS AT THE OFFICES OF ORS?**
- A.** No. NARENCO is only one of +50 Trade Members with no control over the discussions/negotiations. Furthermore, NARENCO does not have any membership interest in the for profit company.
- Q. DID THIS COMMISSION RECEIVE/REVIEW COMMENTS FROM SC SOLAR DEVELOPMENT IN DOCKET 2015-362-E?**
- A.** No. This Commission denied our request to delay its decision and receive formal comments.
- Q. WAS SC SOLAR DEVELOPMENT ALLOWED MEANINGFUL PARTICIPATION IN DOCKET 2015-362-E AT THE COMMISSION?**
- A.** No.
- Q. ALTHOUGH YOU ARE NOT AN ATTORNEY, DO YOU HAVE AN OPINION AS TO SCE&G HAVING A LEGALLY ENFORCEABLE OBLIGATION (LEO)?**

1 **A.** Yes. From my experience I believe that once a qualified facility makes itself available to
2 sell to a utility a legally enforceable obligation may exist prior to the formation of a
3 contract. Furthermore, I understand that each state may develop its own standard as to
4 when a legally enforceable obligation forms so long as it does not conflict with FERC's
5 regulations. I am not aware of the existence of a SC Commission approved LEO form.

6 **Q. ALTHOUGH YOU ARE NOT AN ATTORNEY, DO YOU HAVE AN OPINION**
7 **AS TO WHETHER A CONTRACT WAS FORMED BETWEEN SCE&G AND**
8 **LILY SOLAR?**

9 **A.** Yes, (1) given SCE&G offered to use their LGIP in alignment with their Tariff as a
10 substitute for a state jurisdictional interconnection standard, (2) our acceptance of the
11 offer as evidenced by mutual execution of LGIP study agreements (3) our satisfaction of
12 the agreements via submission of LGIP study payments for the deposits, (4) acceptance
13 by SCE&G of the deposit payments, and (5) countersignature of LGIP referenced study
14 agreements, and (6) SCE&G correspondence supporting their concurrence and
15 referencing compliance with their tariff. Additionally, we relied upon the formation of
16 these contracts in our development activities and investment choices in furthering the
17 development of the project over the course of the better part of a year.

18 **Q. HAVE YOU MET WITH REPRESENTATIVES OF SCE&G REGARDING**
19 **POWER SALES? IF SO, PLEASE PROVIDE THE DATES?**

20 **A.** Yes. The following dates reference key meetings or teleconferences or electronic mail
21 with SCE&G's power team related to our intent to sell power from Lily Solar to SCE&G
22 as a qualified facility. Feb 25, 2015; June 18, 2015; Aug 6, 2015; Aug 21, 2015; Aug 27,
23 2015; Sep 24, 2015; Oct 19, 2015; Oct 26, 2015; Nov 20, 2015; Dec 16, 2015.

1
2 **Q. FROM YOUR OWN PERSONAL KNOWLEDGE, DID YOU GO TO THE**
3 **INTERNET TO REVIEW THE LGIP ON SCE&G'S OASIS WEBSITE? IF SO,**
4 **PLEASE EXPLAIN.**

5 **A.** Yes. I received the website address to access the LGIP and LGIA from SCE&G near the
6 time of the Scoping Meeting. After the filing of Lily Solar's complaint, I attempted to
7 download their LGIP as published in their OATT again but realized it had either been
8 moved or removed from SCE&G's website.

9 **Q. WERE YOU AWARE THAT SCE&G WAS CLAIMING STATE JURISDICTION**
10 **FOR THE LILY SOLAR PROJECT?**

11 **A.** Yes, Matt Hammond (SCE&G), explained that the interconnection of the Lily Solar
12 project was considered state jurisdictional given Lily Solar's intent to sell power to
13 SCE&G as a qualified facility at the point of interconnection at the initial Scoping
14 Meeting held on March 3, 2015 at SCE&G's offices in Cayce, SC. Matt Hammond
15 (SCE&G) agreed that Lily Solar was a large generator given its nameplate capacity of 70
16 MW AC and stated that since no state jurisdictional interconnection standard existed in
17 South Carolina, SCE&G would follow the LGIP ("LGIP") as published in SCE&G's
18 Open Access Transmission Tariff as posted on their website as the Lily Solar
19 interconnection standard. Mr. Hammond mentioned that SCE&G's LGIP (which
20 includes the form of LGIA) was modeled after/is consistent with the Federal Energy
21 Regulatory Commission's ("FERC") *pro forma* LGIP. Mr. Hammond never mentioned
22 that they (SCE&G) believed they had unilateral discretion to change the study
23 methodology nor did any SCE&G representative mention that the LGIA tendered to Lily

1 Solar could (and would) be altered unilaterally at their discretion either. Upon
2 confirmation of SCE&G's statement to follow the LGIP and the remaining technical
3 details provided by their subject matter experts at the Scoping Meeting, we relied on the
4 interconnection standard outlined in the LGIP, in their OATT and relied upon the
5 statements made by Matt Hammond (SCE&G) during the initial Scoping Meeting in
6 submitting a system impact study deposit of \$40,000 and by mutually executing Lily
7 Solar's system impact study agreement. Furthermore, both representatives from SCE&G
8 and Lily solar mutually executed the facilities design study agreement which was
9 satisfied by our tender and SCE&G's acceptance of the \$100,000 facility design study
10 deposit. It is important to note that before I authorized execution of either study
11 agreement, I relied upon the terms and conditions as written in each agreement given
12 their reference to the LGIP. Furthermore, Lily Solar was billed (and subsequently
13 satisfied payments) the deposit amounts that the LGIP required to advance the
14 interconnection application through their LGIP per their OATT.

15 **Q. IS THE LILY SOLAR PROJECT SUPPORTED BY THE SOUTH CAROLINA**
16 **DEPARTMENT OF COMMERCE? IF YES, PLEASE EXPLAIN.**

17 **A.** Yes, the South Carolina Department of Commerce submitted a press release on January
18 27, 2016 supporting Lily Solar in which Secretary of Commerce Bobby Hitt stated,
19 "Team South Carolina works hard every day to cultivate a pro-business environment for
20 companies of all types in our state, and this \$85 million solar project is further evidence
21 that our team-first approach is paying off. I offer my congratulations to NARENCO on
22 their decision to establish operations in Allendale County and look forward to watching
23 them succeed there for many years to come."

1 **Q. IS THE LILY SOLAR PROJECT SUPPORTED BY GOVERNOR NIKKI**
2 **HALEY? IF YES, PLEASE EXPLAIN.**

3 **A.** Yes, in a press release on January 27, 2016, Governor Nikki Haley stated, “NARENCO’s
4 investment in Allendale is another example of a company seeing the opportunities being
5 created by Team South Carolina’s approach to creating a business-friendly environment
6 that companies from any industry can thrive in. We’re excited to welcome NARENCO to
7 the South Carolina family, and to celebrate its \$85 million investment in our state and our
8 people.”

9 **Q. IS THE LILY SOLAR PROJECT SUPPORTED BY THE LEADERSHIP OF**
10 **ALLENDALE COUNTY, SOUTH CAROLINA? IF YES, PLEASE EXPLAIN.**

11 **A.** Yes, in a press release on January 27, 2016, Allendale County Council Chairman James
12 Pinkney stated, “Allendale County welcomes NARENCO and their solar project to our
13 family of alternative energy companies in our region. We appreciate the company’s
14 investment in our county, which will assist with tax revenue to fund county services to
15 our residents. We also appreciate this effort to provide innovative solutions to our state’s
16 energy needs.” Allendale’s Economic Development Commission Chairwoman Barbara
17 Lewis stated, “NARENCO’s decision to locate their solar facility in Allendale will
18 expand our tax base while creating another green energy business here in Allendale. We
19 thank them for their commitment to our community.” Furthermore, South Carolina
20 Regional Development Alliance Chairman Buddy Phillips stated, “We appreciate
21 NARENCO’s investment in our region, and we look forward to working with the
22 company to grow their operations in Allendale County. Renewable alternative energy

1 sources will help diversify our energy sector while expanding the tax base in our rural
2 areas.”

3 **Q. WHAT WOULD YOU LIKE THIS COMMISSION TO DECIDE, AS A RESULT**
4 **OF LILY SOLAR’S COMPLAINT?**

5 **A.** (1) Agree that a contract was formed to follow SCE&G’s Large Generator
6 Interconnection Procedure as published in SCE&G’s tariff; (2) require SCE&G to tender
7 a conforming Large Generator Interconnection Agreement to Lily Solar in alignment
8 with SCE&G’s then current published open-access transmission tariff; (3) recognize that
9 a Legally Enforceable Obligation occurred; (4) that this Commission’s decision should
10 restore Lily Solar *nunc pro tunc* to its Contract position at the time of SCE&G’s improper
11 offer on or about January 14, 2016 ; (5) that Lily Solar’s position in SCE&G’s queue be
12 restored; and (6) That Lily Solar’s contractual rights in this matter, be restored and made
13 whole, consistent with the facts of this case.

14 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

15 **A.** Yes.